

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

DOCKET NO. 2008-04

**Re: Application of Granite Reliable Power, LLC for a Certificate of Site and
Facility for the Granite Reliable Power Wind Park in Coos, County**

**ORDER ON "EMERGENCY" MOTIONS
REGARDING A FINANCIAL CONSULTANT
AND ADDITIONAL DISCOVERY**

February 20, 2009

I. Background

On July 15, 2009, Granite Reliable Power, LLC, (Applicant) filed with the Site Evaluation Committee (Committee) an Application for a Certificate of Site and Facility for the Granite Reliable Power Wind Park, a renewable energy facility, proposed to be located in the Town of Dummer and the unincorporated places of Dixville, Erving's Location, Odell, and Millsfield, all of which are in Coos County. The Application proposes the construction and operation of thirty three (33) wind turbines each having a nameplate capacity of three (3) MW for a total nameplate capacity of ninety-nine (99) MW and associated transmission lines, substations and buildings. The Application also proposes the construction of approximately twelve (12) miles of new access roads and to upgrade approximately 19 miles of existing logging roads.

The Application contained numerous appendices, exhibits and the pre-filed testimony of ten witnesses including that of Christopher Lowe, the Applicant's Chief Financial Officer. The Chairperson of the Committee determined that the Application was complete and designated a Subcommittee to review the Application on August 14, 2008. A public informational hearing was held on October 2, 2008. The Subcommittee visited portions of the proposed site on October 3, 2008. Thereafter, certain parties were permitted to intervene in these proceedings. Since the public information hearing, the parties have been engaged in the discovery process including the exchange of data requests. As part of the discovery process, the parties have met in technical session on four occasions.

II. The Emergency Motions

On February 17, 2009, Counsel for the Public filed an "Emergency Motion for Leave to Retain a Financial Consultant and for an Order Directing Granite Reliable Power, LLC And Noble Environmental Power, LLC to Bear The Costs." On February 18, 2009, Counsel for the Public filed an "Emergency Motion for Additional Discovery." Counsel for the Public also requests an emergency hearing on its motions. The

Applicant, Granite Reliable Power LLC, filed an objection to these motions on February 19, 2009. Counsel for the Public thereafter filed a reply memorandum.

The motions filed by Counsel for the Public assert that the "emergency" necessitating a hearing and immediate relief is a statement by the Applicant that it intended to demonstrate adequate financial capability by proving that "the wind park possesses characteristics that would attract capital in normalized financing markets, thus allowing GRP to demonstrate that it has adequate financial capability." See, Partially Assented to Emergency Motion of Counsel to the Public for Leave to Retain a Financial Consultant and For an Order Directing Granite Reliable Power LLC and Noble Environmental LLC to Bear the Costs Thereof, ¶ 5. Counsel for the Public seeks to employ the services of Cypress Associates, LLC, for the purpose of reviewing the financial capability of the Applicant, reviewing the supplemental testimony supplied by the Applicant, and providing supplemental testimony regarding the financial capability of the Applicant. Counsel for the Public seeks authority to pay Cypress Associates in an amount up to \$75,000.00 to be paid by the Applicant. See, R.S.A. 162-H: 10, V.

Counsel for the Public also seeks authority to conduct further discovery pursuant to NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, SITE 202.12 (a). Counsel for the Public seeks authority to submit additional data requests and take depositions. Counsel for the Public suggests that additional discovery is necessary, in part, because the Applicant "has so far not brought its financial capability witness, Mr. Lowe, to New Hampshire for technical sessions." See, Emergency Motion of Counsel For the Public for Additional Discovery, ¶ 4. Counsel for the Public suggests that additional discovery should consist of additional data requests and depositions. Counsel for the Public also seeks emergency treatment for his motion to conduct further discovery.

The Applicant objects to both motions. The Applicant points out that Counsel for the Public attended a prehearing conference on September 18, 2008 and agreed to a schedule which included deadlines for the filing of pre-filed testimony by the interveners and Public Counsel and the submission of supplemental testimony. The Applicant notes that Public Counsel did not pre-file testimony regarding the Applicant's financial capability and that the Applicant did not request authority to employ a financial consultant when it sought authority to employ other consultants in November of 2008. The Applicant asserts that Counsel for the Public has been dilatory in addressing the issue of financial capability in this matter. The Applicant points out that, as early as December 29, 2008, Public Counsel indicated he was considering retaining a financial consultant, but his motion was not filed until February 17, 2009. The Applicant contends that allowing Public Counsel to submit supplemental pre-filed testimony on financial issues would be unfair at this late stage in these proceedings but the Applicant does not object to allowing Public Counsel to retain a consultant for non-testimonial purposes in an amount not to exceed \$10,000.00.

The Applicant also objects to Counsel for the Public's Motion for Additional Discovery. The Applicant asserts that it has "responded to over 400 data requests, including four rounds of data requests from Public Counsel, and made its witnesses

available for two technical sessions and responded to the data requests that resulted from those technical sessions." The Applicant also contends that it offered to make Mr. Lowe available by telephone to answer questions at the technical sessions and offered to make him available by telephone subsequent to those technical sessions but "Public Counsel did not avail himself of those opportunities." Nevertheless, the Applicant agrees to answer 20 additional data requests regarding financial capability issues but it objects to a deposition.

In his reply memorandum, Counsel for the Public points out that his request in November, 2008 was for environmental consultants only. Counsel for the Public also asserts that he did not receive notice, until recently, that the Applicant would present evidence of its financial capability based upon its ability to obtain financing in the future.

III. Analysis

The Application in this docket was filed on July 15, 2008. In testimony, pre-filed on July 15, 2008, Christopher Lowe, Chief Financial Officer for Noble Environmental Power, LLC, stated:

Noble will arrange for the financing of the project through various potential sources and structures to provide capital for construction equipment and operation of the project. The project is currently estimated to require approximately \$275 million in capital, depending on final equipment and construction costs. As noted above, our ability to raise term capital based on the project revenue stream will enable GRP to raise capital to support the construction of the project.

Pre-filed Testimony of Christopher Lowe p. 3; *see also*, Application, p. 64. On October 2, 2008, the Subcommittee held a public information hearing in Groveton, New Hampshire. Counsel for the Public attended that hearing. At that hearing, the Applicant's representative, Mark Lyons, stated: "The project itself will be project-financed. There's a great deal of value in the project itself. And, given that it's an excellent wind resource, we expect it to be a profitable project for some time to come." Statement of Mark Lyons, Granite Reliable Power, Public Information Hearing, October 2, 2008, Transcript p. 52-53. Later during the hearing the following exchange occurred between Counsel for the Public and Mr. Lyons:

MR. ROTH: And, my penultimate and ultimate questions, which are related: Is this project for sale now? And, I understand that the project is owned and majority shared by JP Morgan Partners, I think is what you identified, owned by a New York investment house. And, everybody is painfully aware of what's going on in New York these days. Are there any issues with the current financial crisis with respect to this project's financeability or developability?

MR. LYONS: Hi, I'm Mark Lyons. This project is not currently for sale. And, we're all familiar with the problems, the general credit problems in the world

economy, frankly. We don't intend to finance this project until just prior to beginning construction, which is sometime off. We all hope that the credit markets will improve by then. I don't have a crystal ball. If I did, I'd be calling you for my vote. But, you know, we're hoping for the best. It doesn't create any specific problem for this project at this time.

Statement of Mark Lyons, Granite Reliable Power, Public Information Hearing, October 2, 2008, Transcript p. 66-67. The Applicant's filings and the aforementioned representations made during the course of these proceedings indicated that the Applicant would seek to finance this project based upon the project itself. The Applicant never suggested that the project would be financed off of its balance sheet or from other assets of the Applicant.

It is clear that Counsel for the Public saw the need for a financial consultant at least as early as December 29, 2008, when he advised the Applicant's counsel that he was considering the retention of a financial consultant. See, Motion of Counsel for the Public to Suspend Deliberations and Proceedings, Exhibit B. It is also fair to conclude that the need for a financial consultant was reasonably foreseeable in prior months given the tumult in the economy and financial markets. Nevertheless, irrespective of the timing of Public Counsel's request, the Subcommittee must consider the interests of the public in developing a full record from which the Subcommittee can perform its statutory duties. R.S.A. 162-H: 16, IV (a) requires the Subcommittee to determine whether the Applicant has "adequate financial, technical and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate." The proposed facility is expansive and expensive and a full hearing with respect to the ability of the Applicant to finance and construct the project in accordance with the Application and any conditions attached to a certificate is necessary to protect the public interest. R.S.A. 162-H: 10, V, provides that the "Site Evaluation Committee and Counsel for the Public shall jointly conduct such reasonable studies and investigations as they deem necessary and appropriate to carry out the purposes" of R.S.A. 162-H and "may employ a consultant or consultants . . . in furtherance of the duties imposed by this chapter, the costs of which shall be borne by the Applicant . . ." Also, the complexities of the analysis appear to justify the proposed expense set forth in Counsel for the Public's motion for leave to retain a financial consultant. Counsel for the Public, however, must abide by the approved procedural schedule and proceed in accordance with the representations to do so that he made in his emergency motion.

Likewise, it appears that further discovery concerning the Applicant's financial capability will contribute to the development of a complete record from which the Subcommittee can determine whether the Applicant has sufficient financial, managerial, and technical capabilities to construct and operate the proposed facility. NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES, SITE 202.12 (a) permits the presiding officer to authorize discovery methods including data requests, interrogatories and depositions "when such discovery is necessary to enable a party to acquire evidence admissible in a proceeding and when such method will not unduly interfere with the prompt and

orderly conduct of the proceedings.” An opportunity for discovery on the supplemental testimony in advance of hearing is reasonable under the circumstances but a deposition does not appear to be the most appropriate or efficient vehicle to provide such discovery. It appears that both the Applicant and Counsel for the Public will provide supplemental testimony pertaining to the Applicant’s financial capability, therefore, a further technical session pertaining to financial capability issues is a more efficient manner of assuring adequate discovery.

Counsel for the Committee is instructed to schedule a further technical session to address financial issues. This technical session shall occur after the deadline for supplemental pre-filed testimony and all witnesses who have submitted testimony regarding the financial capability issue shall be present and prepared to answer questions. Data requests made during the course of the technical session will be answered in writing and with appropriate documentation within seven days after the technical session. To the extent that such data requests raise issues that may be considered to be confidential, those parties wishing to receive such documentation shall sign a confidentiality agreement previously prescribed in this docket. In order to provide for expeditious discovery and to promote the orderly conduct of the proceedings it shall not be necessary for such confidentiality agreements to be approved by the Chairman.

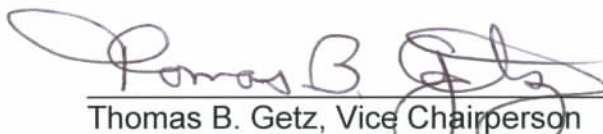
IT IS HEREBY ORDERED that the Motion of Counsel for the Public for Leave to Retain a Financial Consultant and for an Order Directing Granite Reliable Power LLC and Noble Environmental Power LLC to Bear the Cost Thereof is hereby **GRANTED**; and,

IT IS HEREBY ORDERED that the Motion of Counsel for the Public for Additional Discovery is hereby **GRANTED IN PART AND DENIED IN PART** in that Committee Counsel shall schedule a further technical session pertaining to the financial capabilities of the Applicant and parties shall respond to data requests from said technical session within seven days thereafter; and,

IT IS HEREBY ORDERED that the motion of Counsel for the Public for an Emergency Hearing is **DENIED**; and,

IT IS FURTHER ORDERED that all deadlines and hearing dates previously set in this docket shall remain in full force and effect.

So ordered, this 20th day of February, 2009.



Thomas B. Getz, Vice Chairperson
New Hampshire Site Evaluation Committee
Presiding Officer